



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

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### **The Massachusetts Department of Environmental Protection's Action on the *Heritage-Crystal Clean* Petition December 20, 2013**

#### **I. Introduction of the *Heritage-Crystal Clean* Petition**

On April 4, 2013, pursuant to M.G.L. c. 30A, §4 and 310 CMR 2.02, Heritage-Crystal Clean (hereinafter referred to as “the Petitioner” or “HCC”), filed with MassDEP a “Petition for Adoption of Regulations by Heritage Crystal-Clean, LLC Pursuant to 310 C.M.R. 2.00 and General Laws c. 30A, § 4 Encouraging the Re-Refining of Used Oil.” At MassDEP’s request, the Petitioner submitted a supplement to its petition detailing its proposed regulatory changes dated September 6, 2013. (HCC’s submittals dated April 4, 2013 and September 6, 2013 are hereinafter referred to as “the HCC petition” or “the petition.”)

Pursuant to the regulatory requirements under 310 CMR 2.03 and 2.04, MassDEP held a public meeting on December 11, 2013, to consider the petition and to take comments and questions on the petition. At the meeting, HCC presented its petition. Only one other party attended the meeting, and no other party commented.

Under the regulations, within ten days after the meeting, MassDEP shall determine whether to schedule the petition for further proceedings in accordance with 310 CMR 2.05 or 2.06, and thereafter notify the petitioner of MassDEP’s action. For the reasons stated below in Section IV, MassDEP is not scheduling further proceedings on the HCC petition at this time.

#### **II. Applicable State Law for Filing and Responding to the Petition**

Under M.G.L. c. 30A, §4, “[a]ny interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent. Each agency shall prescribe by regulation the procedures for the submission, consideration and disposition of such petitions.” M.G.L. c. 30A, §4.

Moreover, MassDEP's Adopting Administrative Regulations set forth at 310 CMR 2.00 detail what must be included in a petition and how MassDEP must respond to such petition. 310 CMR 2.02 states in part that:

Any interested person or his attorney may at any time petition the department to adopt, amend, or repeal any regulation... All petitions shall be signed by the petitioner or his attorney, contain his address..., and set forth clearly and concisely the text of the proposed regulation. The petition may be accompanied by any supporting data, views or arguments.

310 CMR 2.03 states in part that:

Upon receipt of a petition for the adoption, amendment or repeal of a regulation submitted pursuant to 310 CMR 2.02...the department shall consider the petition ...at a meeting and shall, thereupon, determine whether to schedule the petition... for further proceedings in accordance with 310 CMR 2.05 or 310 CMR 2.06. If the regulation has been presented to the department by petition..., the department shall within ten days after the meeting notify the petitioner of the department's action.

310 CMR 2.04 states in part that:

During the meeting..., the department may, but shall not be required to, entertain comments or questions from members of the audience.

### **III. The HCC Petition**

#### **The Petitioners' Request**

In the HCC petition, the Petitioner requested that MassDEP adopt rules and regulations that would regulate oil destined for re-refining in the same manner as used oil recycled by being burned for energy recovery.

The Petitioner specifically requested that MassDEP: 1) add a definition for "re-refining" to 310 CMR 30.010; 2) add "used oil for refining" to 310 CMR 30.221(3)(a)4. so generators that ship used oil for refining with a transporter/marketer do not need a permit; 3) add used oil for re-refining to 310 CMR 30.252(1) to the list of acceptable methods of managing waste oil that is not used oil fuel; and 4) add a new section to 310 CMR 30.000 to define who is a "marketer" of used oil destined for re-refining.

#### **Petitioners' Statement of Reasons for Filing the Petition**

The Petitioner argues that under the hazardous waste regulations at 310 CMR 30.000 used oil sent for re-refining should be treated the same as used oil burned for energy recovery. Under the current regulations the Petitioner, which collects and re-refines used oil to make lubricant oil, is at a competitive disadvantage because some of its customers need a recycling permit to send their oil for re-refining, while customers that send their oil for burning for energy do not. HCC

argues there is an unfair bias in favor of oil destined for burning because of how the current rules at 310 CMR 30.000 are written:

- Small Quantity Generators (SQGs)/Large Quantity Generators (LQGs) sending waste oil for **re-refining** must have a recycling permit.
- SQGs/LQGs sending waste oil for **burning for energy recovery** do not need a permit provided they offer their waste oil to a Transporter/Marketer as Specification Used Oil Fuel.

The Petitioner also includes the following points in its petition:

- The method of re-refining used oil takes place at its facility in Indianapolis, Indiana. The Petitioner collects used oil from thousands of its customers/generators across the country and prepares the oil for reuse by using a process that produces lubricating base oil.
- Re-refining used oil is environmentally superior to burning for energy recovery in terms of resource conservation because it reduces the demand on natural resources by re-refining used oil instead of using “new” crude oil.
- Since the used oil is not burned for energy recovery, it reduces air pollution. In the re-refining process certain heavy metals are extracted from the used oil instead of being released into the atmosphere if it were burned.

#### **IV. MassDEP’s Action on the HCC Petition**

After reviewing the supporting data, views and arguments contained in the petition, and the testimony provided by HCC at the December 11, 2013 public meeting, MassDEP declines to schedule further proceedings on the petition at this time for the following reasons.

##### Lack of Performance Standard

MassDEP believes it is appropriate for generators sending their used oil for re-refining to have a permit because there are no standards in 310 CMR 30.000 for used oil destined for re-refining while standards exist for used oil fuel sent to be burned for energy recovery. Such a permit could be used to define allowable limits of any constituent or property in used oil destined for re-refining. Without such regulatory standards, and without a permit (as proposed by HCC), the Department is concerned that contaminants such as lead, benzene and PCBs could find their way into re-refiner produced products. Under current regulations, generators that ship their used oil off-site for burning have to meet the used oil fuel standards in the hazardous waste regulations (see 310 CMR 30.215 and 30.216). There are no such standards for re-refining used oil.

##### Shipping Options/De Minimus

The hazardous waste regulations provide options for generators that want to send used oil for re-refining. Generators can ship the used oil on a manifest and pay a hazardous waste transporter fee (26.4 cents per gallon or 2.64 cents per pound) or they can ship it as a regulated recyclable material on a bill of lading (no transporter fee). Very small quantity generators do not need a permit to ship used oil for re-refining. Small quantity and large quantity generators need a

recycling permit that costs \$130 for five years. Although this is not the same regulatory path as sending used oil to burn for energy recovery, MassDEP does not believe this is a significant hardship for generators.

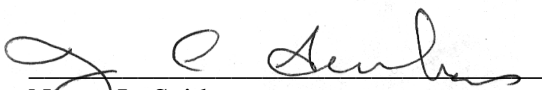
#### Lack of Environmental Benefits

Further, the Petitioner's environmental benefits argument is not compelling enough to warrant regulatory revisions at this time. The Petitioner has promoted the environmental benefits of oil re-refining based on the premise that "[r]e-refining used oil reduces the demand on natural resources by using less crude oil." However, a gallon of used oil that is diverted from burning for energy recovery and is instead sent for "re-refining" will in many cases be replaced by a gallon of some other heating fuel.

#### **V. Conclusion**

Although the Petitioner wants MassDEP to amend its hazardous waste regulations to allow used oil destined for re-refining to be shipped from any size generator without a permit, MassDEP declines to pursue that change at this time. There are existing regulatory pathways for generators who want to ship used oil to a re-refinery that are not costly or burdensome. In addition, MassDEP must ensure that used oil sent for re-refining has sufficient safeguards to protect public health and the environment, and that cannot be done without completing a very lengthy investigative and rule-making process. The expenditure of MassDEP resources for such a rule-making, which would be a considerable, resource intensive undertaking, cannot be justified at this time, by the minimal, environmental benefit to be gained.

Developing a regulatory package that includes standards for used oil sent for re-refining would require a large commitment of staff resources. At the present time, MassDEP does not have the resources to develop and implement regulatory changes of this magnitude. However, despite the Department's decision not to act on the Petitioner's proposal at this time, the Petitioner's proposal is not without merit, and in the future MassDEP may decide to work on regulatory changes similar to what the Petitioner has suggested.



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